

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ROBERT OLAFSON and
PATRICIA OLAFSON
Plaintiffs,

v.

KYLE E. BYRNE and BFI WASTE
SERVICES OF MASSACHUSETTS, LLC
and MARGARET HAMILL
Defendants.

DOCKET NO: 04 10158MLW

**ANSWER AND JURY DEMAND OF DEFENDANTS,
KYLE E. BYRNE AND BFI WASTE SERVICES OF MASSACHUSETTS, LLC,
TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND**

FIRST DEFENSE

Each Count of the plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

FIRST DEFENSE

Each Count of the plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

The defendants, Kyle E. Byrne and BFI Waste Services of Massachusetts LLC, responds to the allegations contained in the plaintiffs' Complaint paragraph by paragraph as follows.

PARTIES

1. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
2. The defendants deny the allegations contained in this paragraph.
3. The defendants deny the allegations contained in this paragraph.

4. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

JURISDICTION AND VENUE

5. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

FACTUAL BACKGROUND

6. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
7. The defendants admit the allegations contained in the first sentence. The defendants deny the allegations contained in the second sentence.
8. The defendants state that this paragraph refers to another co-defendant and, therefore, no response is required.
9. The defendants state that this paragraph refers to another co-defendant and, therefore, no response is required.
10. The defendants deny the allegations contained in this paragraph.
11. The defendants deny the allegations contained in this paragraph.
12. The defendants deny the allegations contained in this paragraph.
13. The defendants deny the allegations contained in this paragraph.
14. The defendants deny the allegations contained in this paragraph.

COUNT I

ROBERT OLAFSON v. KYLE E. BYRNE

Negligence

15. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 14 of the Complaint and all of their affirmative defenses.
16. The defendants deny the allegations contained in this paragraph.
17. The defendants deny the allegations contained in this paragraph.

COUNT II

ROBERT OLAFSON v. BFI

Agency/Respondent Superior

18. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 17 of the Complaint and all of their affirmative defenses.
19. The defendants deny the allegations contained in this paragraph.
20. The defendants deny the allegations contained in this paragraph.

COUNT III

PATRICIA OLAFSON v. KYLE E. BYRNE

Negligence

21. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 20 of the Complaint and all of their affirmative defenses.
22. The defendants deny the allegations contained in this paragraph.

23. The defendants deny the allegations contained in this paragraph.

COUNT IV

PATRICIA OLAFSON v. BFI

Agency/Respondent Superior

24. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 23 of the Complaint and all of their affirmative defenses.
25. The defendants deny the allegations contained in this paragraph.
26. The defendants deny the allegations contained in this paragraph.

COUNT V

ROBERT OLAFSON v. MARGARET HAMILL

Negligence

27. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 26 of the Complaint and all of their affirmative defenses.
28. The defendants state that this paragraph refers to another co-defendant and, therefore, no response is required.
29. The defendants state that this paragraph refers to another co-defendant and, therefore, no response is required.

COUNT VI

PATRICIA OLAFSON v. MARGARET HAMILL

Negligence

- 30. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 29 of the Complaint and all of their affirmative defenses.
- 31. The defendants state that this paragraph refers to another co-defendant and, therefore, no response is required.
- 32. The defendants state that this paragraph refers to another co-defendant and, therefore, no response is required.

COUNT VII

ROBERT OLAFSON v. KYLE E. BYRNE

Consortium

- 33. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 32 of the Complaint and all of their affirmative defenses.
- 34. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
- 35. The defendants deny the allegations contained in this paragraph.

COUNT VIII

ROBERT OLAFSON v. BFI

Consortium

- 36. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 35 of the Complaint and all of their affirmative defenses.
- 37. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
- 38. The defendants deny the allegations contained in this paragraph.

COUNT IX

ROBERT OLAFSON v. MARGARET HAMILL

Consortium

- 39. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 38 of the Complaint and all of their affirmative defenses.
- 40. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
- 41. The defendants deny the allegations contained in this paragraph.

COUNT XI

PATRICIA OLAFSON v. KYLE E. BYRNE

Consortium

- 42. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 41 of the Complaint and all of their affirmative defenses.
- 43. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
- 44. The defendants deny the allegations contained in this paragraph.

COUNT XI

PATRICIA OLAFSON v. BFI

Consortium

- 45. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 44 of the Complaint and all of their affirmative defenses.
- 46. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
- 47. The defendants deny the allegations contained in this paragraph.

COUNT XII

PATRICIA OLAFSON v. MARGARET HAMILL

Consortium

48. The defendants incorporate as if fully set forth herein their responses to paragraphs 1 through 47 of the Complaint and all of their affirmative defenses.
49. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
50. The defendants state that this paragraph refers to another co-defendant and, therefore, no response is required.

AFFIRMATIVE DEFENSES

THIRD DEFENSE

The defendants deny each and every allegation of the plaintiff's Complaint except as specifically admitted above.

FOURTH DEFENSE

By way of affirmative defense, the defendants state that the action is barred by the applicable statute of limitations.

FIFTH DEFENSE

By way of affirmative defense, the defendants state that the negligence of the plaintiff, Robert Olafson, was greater than the alleged negligence of the defendants, that such negligence of the plaintiff, Robert Olafson, contributed to his alleged injuries and, therefore, the plaintiff, Robert Olafson, is barred from recovery under M.G.L. c.231, §85.

SIXTH DEFENSE

By way of affirmative defense, the defendants state that the plaintiff, Robert Olafson was guilty of comparative negligence and that the damage, if any, recovered by the plaintiff, Robert Olafson, from the defendants should be reduced in proportion to the said negligence of the plaintiff, Robert Olafson, in accordance with M.G.L. c.231, §85.

SEVENTH DEFENSE

By way of affirmative defense, the defendants state that at the time of the alleged incident, the plaintiff, Robert Olafson, was guilty of a violation of law which caused or contributed to the alleged accident.

EIGHTH DEFENSE

By way of affirmative defense, the defendants state that if the plaintiff, Robert Olafson, was injured, it was as a result of plaintiff, Robert Olafson's, breach of his duty to exercise a high degree of care to protect and ensure his own safety.

NINTH DEFENSE

By way of affirmative defense, the defendants state that the injuries alleged were caused in whole or in part by the negligence of the plaintiff, Robert Olafson

TENTH DEFENSE

By way of affirmative defense, the defendants are guilty of no negligence.

ELEVENTH DEFENSE

By way of affirmative defense, the defendants state that this action shall be dismissed for insufficiency of process.

TWELFTH DEFENSE

By way of affirmative defense, the defendants state that the plaintiffs have failed to mitigate their alleged damages.

THIRTEENTH DEFENSE

The defendants state that this action shall be dismissed for lack of jurisdiction.

JURY CLAIM

THE DEFENDANTS DEMAND A JURY TRIAL ON ALL ISSUES RAISED IN THEIR ANSWER.

The Defendants,
**KYLE E. BYRNE and BFI WASTE
SERVICES OF MASSACHUSETTS LLC,**
By their attorneys,

/s/_____
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